
TO: General Assembly

FROM: James H. Douglas, State Treasurer

RE: Study of Military Service Credit in the Vermont Retirement Systems

DATE: January 15, 2001

Introduction

Section 28a of Act 158 enacted during the 2000 legislative session directed the State Treasurer to conduct a comprehensive study of the military service credit in the State Employees' Retirement System, the State Teachers' Retirement System, and the Municipal Employees' Retirement System, and report findings and recommendations to the General Assembly on or before January 15, 2001.

The State Treasurer's understanding of the legislative directive was to ascertain what the three Vermont public retirement systems have done and are currently doing in terms of recognizing military service for retirement credit, how that compares with what is being done throughout the country in other public retirement plans, and whether there are adjustments or further considerations that should be addressed.

This review of military service credit included many components. A military survey was mailed to all active and retired members of the three retirement systems. The survey endeavored to determine the total number of years of military service represented by the members of the retirement systems, whether the service had been purchased by, or

granted to, the members, and whether the military service would qualify for other types of retirement benefits outside of the Vermont retirement systems. In addition to the survey, information was solicited from other states relating to their military service provisions. A review of federal laws pertaining to veterans' benefits, in particular veterans' rights, was conducted to ensure Vermont is in full compliance. The study was also discussed with representatives of the Vermont Military Department for their input and feedback.

1. Legislative History

Vermont has long been a forerunner in recognizing military service for retirement credit. When the State Employees' and Teachers' systems were established in 1947, provisions were included to grant credit for any period of absence from service in connection with a national emergency due to any class of military or naval service of the United States, provided the member returned to service within a specified period of time after having been discharged or separated.

In 1973, legislation passed that gave a member of the Teachers' Retirement System the ability to purchase up to three years of military service, provided the member had completed fifteen years of creditable teaching service and had, prior to becoming a member, served a minimum of one full year of full-time service in the military and had derived no military pension benefits from that service. In 1981, the statute was revised to identify group A contributory members as the only members eligible to make a military purchase.

In 1978, pursuant to its statutory authority, the Board of Trustees for the Vermont State Retirement System approved a grant of service credit to members whose State service was interrupted by military service during the Vietnam conflict between the dates of August 5, 1964 and May 7, 1975, provided such military service was active duty of ninety days duration or more and the member terminated under honorable conditions.

In 1983, statutory language in the Teachers' Retirement System was expanded to allow a group B non-contributory member to receive a grant of up to three years of service credit for military service between August 5, 1964 and May 7, 1975, provided the same criteria applicable to the purchase of service were met.

In 1990, group C contributory members of the Teachers' Retirement System were given the ability to purchase up to three years of military service provided the eligibility criteria were met. The statutory language in the Teachers' Retirement System was also expanded to allow group C members who were previously group B members to be granted up to three years of credit for military service during the period between August 5, 1964 and May 7, 1975 under the same conditions as group B members.

In 1990, legislation also passed that allowed a member of the Vermont State Retirement System to purchase up to three years of military service, provided the member had rendered fifteen years of creditable service and had, prior to becoming a member, served a minimum of one full year of full-time service in the military and had derived no military pension benefits.

In 1992, the Teachers' Retirement System statute was expanded to include a grant of up to three years of military service to group B members and group C members who were previously group B members for the period June 25, 1950 through January 31, 1955, provided eligibility criteria were met.

In 1995, the Teachers' statute was again amended to allow group A members to be eligible for the grant of military service during specified periods of time.

In 1999, members of the Vermont State Retirement System were granted up to three years of creditable service during the periods between June 25, 1950 and January 31, 1955, and August 5, 1964 and May 5, 1975, under the same eligibility criteria as outlined for the Teachers' system.

In 2000, the statutes for both the Teachers' and State Employees' systems were amended to allow for a total of five years of military service to be creditable, either through a purchase or a combination of purchase and grant. The maximum number of years available for grant remained capped at three.

According to available records, over 567 years of military service have been granted to 241 members of the Vermont State Retirement System. Over 354 years of military service have been granted to 161 members of the Teachers' Retirement System. In addition, numerous members in both systems have taken advantage of their ability to purchase military service and consequently added years to their retirement account.

The Municipal Employees' Retirement System is a relatively new system, having been established in 1975. There are currently no provisions allowing for either the purchase or grant of military service by members of that system.

2. Results of Member/Retiree Survey

Both active and retired members of the State, Teachers', and Municipal Employees' Retirement Systems were surveyed in order to obtain information and an estimate of the number of members and retirees who actually served in the military. A poll of the entire population was deemed the most appropriate method to obtain information because no resource currently exists that provides the necessary data and information. The following reflects the results of the survey:

	<u>RETIREEES</u>	<u>ACTIVES</u>
a. Number of surveys mailed:		
State	3,394	7,058
Teachers	3,485	12,660
Municipal	<u>814</u>	<u>6,078</u>
Total	7,693	25,796

RETIREESACTIVES

b. Number of surveys returned:

State	561	394
Teachers	418	53
Municipal	<u>144</u>	<u>130</u>
Total	1,123	577

c. Total years of military service reported, including guards and reserves

State	3,070	2,331
Teachers	1,791	275
Municipal	<u>637</u>	<u>752</u>
Total	5,498	3,358

d. Of the years reported, number served during conflict period not previously granted or purchased

State	453	216
Teachers	146	34
Municipal	<u>122</u>	<u>140</u>
Total	721	390

e. Of the years reported, number served to receive or potentially receive a military pension

State	1,538	1,274
Teachers	677	120
Municipal	<u>223</u>	<u>330</u>
Total	2,438	1,724

The above numbers reflect a fair representation of the retired population and are therefore deemed to be reasonably accurate. The response from the active members is considerably lower than expected, which could be interpreted to mean that either fewer active employees served in the military, or that they have already received credit for their military service.

The numbers reflected in item (d) are somewhat higher than one would expect, given that two of the three systems provide for a grant or purchase of military service under certain conditions. It is highly probable that the numbers reflect years that were not made available prior to the member's retirement, or that the member did not or does not have the required fifteen years of service in order to receive the military credit.

Also, the numbers reflected in item (e) would serve to offset some of the years of service reported, as credit cannot be received if a member derives a military pension from such service.

3. Military Service in Other State Systems

Information was solicited from public retirement systems in all fifty states. The State Treasurer's Office received responses from 30 other public plans across the country. The answers to the questions as summarized below reflect a wide range of recognition for military service.

1. Does your system have a provision for granting military service credit?

24 responded YES (Vermont is YES)

2. What is the maximum number of years that may be granted?

Of those responding YES to #1, 13 indicated a maximum of 5 years, 4 indicated a maximum of 4 years, and the remainder varied between 6 and 10. One system indicated "no limit" on the number of years that could be granted. (Vermont is 3)

3. Is there a specific time frame the military service must fall within?

The responses were varied, but the majority indicated the grant was for service during an approved leave of absence to serve in the military and required return to work within a specified timeframe. Only two systems indicated they granted credit for service during a recognized Conflict period. (Vermont recognizes the Korean Conflict and Vietnam Conflict periods)

4. Is there a minimum number of creditable years of service required before a member is eligible for a grant of military service?

15 of those responding YES to #1 stated that NO minimum number of years were required. The others varied between 5 and 10 years. (Vermont requires a minimum of 15 years of service)

5. **Does your system have a provision for purchase of military service?**

All but 5 of the systems responded YES to this question. (Vermont is YES)

6. **What is the maximum number of years that may be purchased?**

9 systems indicated a maximum of 5 years. 8 systems reflected a maximum of 4 years. The remainder varied between 2 and 3 years. (Vermont is 5)

7. **Is there a minimum number of years of creditable service required before a member is eligible to purchase military service?**

19 of the systems responded YES. (Vermont is YES)

8. **If yes, how many?**

8 of the systems indicated a minimum of 5 years. The remainder varied between 1 month and 10 years. (Vermont is 15)

9. **Are retirees in your system entitled to receive a retroactive grant or able to retroactively purchase military service after retirement?**

23 responded NO to this question. 1 stated "if permitted by legislature". (Vermont is NO)

10. **Does your system allow for a grant or purchase of military service credit if the member is also entitled to a benefit for that service from another source?**

16 systems responded NO; 12 systems responded YES. The remaining systems allowed the credit under specific circumstances. (Vermont is NO)

The information compiled from other public plans reveals that Vermont has a higher eligibility threshold (15 years of service) for receiving credit for military service than any other system responding to the survey. However, more generous provisions that allow for a grant of credit for military service during the Korean and Vietnam Conflict periods that did not need to fall during a leave of absence offset the higher eligibility threshold. Vermont is in line with the overwhelming majority of public plans in denying retroactive military benefits to retirees.

4. Military Credit in the Civil Service Retirement System

Military service in the Armed Forces of the United States is creditable for Civil Service Retirement purposes only if (1) it was active service and terminated under honorable conditions, and (2) the service was performed before separating from a civilian position under the Retirement System.

An exception to the general rule cited above is that a Civil Service employee cannot receive credit for any military service if he or she receives military retired pay unless it was awarded (a) on account of a service-connected disability either incurred in combat with an enemy of the United States or caused by an instrumentality of war and incurred in the line of duty during a period of war, or (b) under the provisions of Chapter 67, Title 10, U.S.C. (pertaining to retirement from a reserve component of the Armed Forces).

Since 1984, all military service is creditable except as noted above. In most cases, a deposit representing 3% of base military pay when served is required to receive credit for military service. If the employee does not make a deposit, the military credit will be deleted from the annuity portion of the retirement computation when the employee reaches age 62 if he or she is entitled to a Social Security benefit at that time.

Service in the National Guard, except when ordered to active duty in the service of the United States, is generally not creditable. Credit may be received, however, for National Guard service, followed by Federal civilian reemployment that occurs after August 1, 1990, when all of the following conditions are met:

The service must interrupt civilian service and be followed by reemployment in accordance with the appropriate chapter of the laws concerning Veterans Benefits. It must be full-time, not inactive duty, and the employee must be a member of the U.S. Army National Guard or U.S. Air National Guard. Also, it must be under a specified law and the employee must be entitled to pay from the U.S. for the service.

Employees receiving military retired pay that bars credit for military service may elect to waive the retired pay and have the military service added to their civilian retirement service. If the employee does not waive the military pension, retirement benefits will be based on their civilian service only.

5. Military Pension Eligibility Criteria

Twenty (20) years of active duty is required to be eligible for a pension from the military. Retirement can occur at any age after accrual of the required 20 years of service, but must occur at age 60 except within certain ranks. Additional service accrued beyond 20 years under active duty will result in a larger pension at retirement.

An employee who serves part-time in the guard or reserve earns points towards retirement credit as well. Part-time guard or reserve duty (primarily weekends and two weeks during the summer) equals between 60 and 75 points a year. In order to receive a year of retirement credit, a part-time guard or reservist must earn a minimum of 60 points each year. Less than 60 points per year will result in a loss of all retirement credit for that year. A total of 20 or more years are required for entitlement to a pension. All military service is counted as credit towards the required 20 years, including full-time active duty served prior to enlisting in the Guard or Reserve. Age 60 is the mandatory retirement age for the Guard and Reserve, unless the employee is on active full-time duty. Exceptions to this mandatory retirement age are provided to certain professionals such as doctors, dentists and lawyers, who may continue to participate until age 64. The Adjutant General is exempted from mandatory retirement.

6. Compliance with Veterans' Employment and Reemployment Rights

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), enacted October 13, 1994 (Title 38 U.S. Code, Chapter 43, Sections 4301-4333, Public Law 103-353), significantly strengthened and expanded the employment and reemployment rights of all uniformed service members. In particular, the Act

guarantees the protection of benefits for persons who have been absent from a position of employment because of “service in the uniformed services”. The Act provides specific guidelines by which an employee must provide advance notice of military service, the maximum duration of such service, and the timeframe during which the employee must return to work after completion of the military service. If the guidelines are met, the Act stipulates that there can be no loss of benefits while the employee serves in the military.

Vermont has been in full compliance with USERRA since passage. Full service credit is granted to all employees for periods of absence for military service providing all of the eligibility criteria are met.

Conclusion

In summary, under current law, to be eligible for either a grant or purchase of military service, a member must have 15 years of creditable teacher or state service, must have served a minimum of one year of full-time service, must have served prior to becoming a member of the system, and must derive no military pension benefit from the prior military service. The same criteria apply to be eligible for a grant of service so long as the period of service falls within the specified conflict periods.

Vermont has been very pro-active in recognizing military service for retirement credit. The eligibility requirements to purchase military service are comparable to similar public plans throughout the country. Despite numerous legislative adjustments over the years, there are still active and retired members who have served in the military and have not been recognized for a variety of reasons. In particular, many members may have retired before enabling legislation was passed, or have not or will not meet the 15-year service requirement. To apply legislative changes that enhance benefits for active members retroactively to retirees is extremely costly to the systems. The majority of public pension systems that provided information to this office deny retroactive military benefits to employees. This office has historically opposed retroactive application of enhanced benefits granted by the legislature to active members due to cost and public policy

considerations. It is important, however, to review the statutory provisions periodically to ensure they are still timely and fair, and continue to meet the general intent and spirit of the original legislation.

The requirement found in Vermont's statutes that a member is not eligible to purchase or obtain a grant of prior military service if the member derives a military pension benefit from that military service has been challenged in some other jurisdictions. Most recently, the U.S. District Court for Rhode Island ruled that a similar provision in Rhode Island law that limited the ability of members of the state retirement system from purchasing credit for prior military service if that service was credited in another pension system was in conflict with federal law. That federal law, 10 U.S.C. § 12736, prevents states from denying an individual a pension benefit in the state system because the individual receives, or may receive, a military pension for non-regular military service. The court ruled that the federal law took precedence over the state law and controlled to the extent state law was in conflict.

The courts that have reviewed this issue have recognized that a state is not required by federal law to offer any credit to members for prior military service. If a state does allow for that benefit, however, the courts have held that the benefit cannot be denied a member on the basis that the member may derive a military pension benefit for non-regular military service as well. Although the court decisions that have addressed this are not binding precedent in Vermont, they do provide guidance on how the retirement system should proceed in application of the criteria for allowance of a grant or purchase of military credit. The Congressional intent in enacting §12736, according to the courts, was “to induce members of the armed forces to remain in the reserves for at least the period of time necessary to qualify for a military pension, thereby keeping a significant cadre of trained people in reserve” and “to ensure that serving in the reserves long enough to earn a pension would not prevent an individual from receiving any retirement benefits a state may offer to its employees.” Almeida v. Retirement Board of Rhode Island, 116 F.Supp.2d 268, 276-277 (D. R.I. 2000); see also Cantwell v. County of San Mateo, 631 F.2d 631, 634 (9th Cir. 1980).

Recommendations

- Vermont laws pertaining to retirement credit for military service should be amended to conform to 10 U.S.C. §12736. This should include the provision of authority to the Boards of Trustees for the Vermont State Retirement System and the Teachers' Retirement System to consider applications from otherwise eligible beneficiaries for a grant or purchase of prior military service and to make adjustments to their retirement benefits when appropriate. In addition, the State Treasurer should be provided with the authority to consider applications from otherwise eligible members of the State of Vermont Defined Contribution Plan and make appropriate deposits from the General Fund into their retirement accounts.
- Provide a one-time stipend from the general fund to beneficiaries of the State and Teachers' Retirement System who served in the military and met the statutory eligibility criteria, but were unable to obtain credit prior to retirement, in recognition of their service to our country.
- Allow members of the three retirement systems to receive a grant of service for all periods of absence to serve in the military, regardless of when served, providing return to work occurs within a specified period of time. At the present time, a grant of service for periods of absence to serve in the military are only allowed if the absence occurred on or after October 13, 1994 (the date when the USERRA was enacted) unless absence represents a state employee's military service during the Vietnam Conflict period.
- Provide an option to purchase service comparable to the existing provisions for state employees and teachers to members of the Municipal Employees' Retirement System provided the purchase is cost-neutral to the System.